IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WP(C).No. 27793 of 2007(H)

PETITIONER:

VADAVIL BASHEER, AGED 55 YEARS,
S/O. MAMMOO, VADAVIL HOUSE, TEMPLATE GATE P.O.,
THALASSERY.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

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1. THALASSERY MUNICIPALITY, REPRESENTED BY
ITS SECRETARY, THALASSERY.

2. TOWN PLANNING OFFICER,
THALASSERY MUNICIPALITY, THALASSERY.

3. DEVELOPMENT COMMITTEE,
REPRESENTED BY ITS CHAIRMAN,
THALASSERY MUNICIPALITY, THALASSERY.

BY ADV. SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 27793 of 2007

Dated this the 8th day of October , 2007

JUDGMENT

No counter affidavit has been filed by the respondent Municipality so far. This writ petition is filed by the petitioner whose application for permission for the construction of a residential building was rejected by the Municipality under Ext.P2 order stating three reasons. First two reasons are that there is a proposal to widen the existing road to 15 meters as per the development plan of the Municipality and that the plan submitted by the petitioner does not show the above proposal of the Municipality . The next objection is that going by the plan the proposed leech pit socket pit have been shown in a manner violating the Kerala Municipalities Building Rules 26.

2. Sri.T.M.Abdul Latiff the learned counsel for the petitioner submitted that corrected plan will be submitted so that the allegation that the KMBR 26 is violated will be corrected. As regards the first two objections, the learned counsel drew my attention to my own judgment in W.P.(C) No.17026/2007 and submitted that the

development plan referred to in Ext. P2 was prepared 2 or 3 decades ago and that the same has not been implemented at least as regards the proposal to widen the road to 15 meters. Sri.Latiff Further submitted that the petitioner's property will not necessary for the proposed widening . The learned counsel drew my attention also to the judgment of the Supreme Court in **Raju S.Jethmalani v. State of Maharashtra (2005) 11 SCC 222)** and the judgments of this court in **Padmini v. State of Kerala (1999 (3) KLT 465)** as well as **Francis v. Chalakudy Municipality (1993 (3) KLT 560)**

3. The above submissions of the learned counsel Sri.Abdul Latiff could not be resisted by Sri. I.V.Pramod the learned counsel for the Municipality. I find merit in the Sri. Latiff's submissions that as much as no notification under Section 4(1) of the Land Acquisition Act has so far been promulgated by the Municipality for acquisition of any portion of the petitioner's property for road widening purpose or any other genuine public purpose, the Municipality is not justified in rejecting the plan on the ground of proposed land acquisition. Therefore I dispose of the writ petition itself issuing the following directions:

4. Ext.P2 is quashed and the Municipality is directed to pass fresh orders on the petitioner's application for building permit provided

the following conditions are complied with by the petitioner.

i). The petitioner will submit fresh plan rectifying the 3rd mistake noted in Ext.P2 i.e. going by the plan the proposed leech pit socket shall not violate the KMBR Rules.

ii). The petitioner will also file an affidavit before the Municipality stating that in case the Municipality is able to facilitate the promulgation of a Notification under Section 4 (1) of the Act for the acquisition of any portion of the petitioner's property covered by the plan to be granted within 9 months of the Municipality getting copy of this judgment, the petitioner will not claim any compensation for the building to be put up by him pursuant to the permission to be granted pursuant to this judgment.

iii). Once affidavit as directed above is filed by the petitioner and rectified plan is presented by him, the Municipality will pass fresh orders on the permit application. The proposal to acquire the property or any portion of the property for the proposed road widening for implementation of the development plan shall not be a ground for rejecting the plan.

Iii). It is also made clear that even after the period of 9 months if the Municipality feels any genuine public purpose to acquire the petitioner's property, this judgment will not stand in the way of

acquiring the petitioner's property including the building. But under such an even the petitioner will be entitled for adequate compensation for the building also as per the Land Acquisition Act.

PIUS C. KURIAKOSE,
JUDGE.

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